

Be sure your company can survive a partner's departure



GUEST COLUMN

Lawrence M.
Ploucha

The economic uncertainty that's roiling public companies is also causing privately owned businesses to rethink their futures. Now is the time to review agreements that govern what would happen if a company shareholder left for business or personal reasons.

Qualified lawyers can draft buy-sell agreements that make for orderly exits

of business owners. There are cross-purchase and stock-redemption agreements that each have their own merits. These can be integrated with insurance policies and into individual estate plans.

Your business may already have plans in place. If so, take them out of the drawer or safe-deposit box where they were safely stored after you signed them. The business world has changed dramatically in the past several years, and assumptions you made about your company's growth and expected value have altered. It's time to rethink your business.

PLAN AHEAD FOR THE ISSUES

If your company has not created a plan for a shareholder's departure, sit down with your business adviser and ask these questions:

- What would we do to secure our company's future if the owner or a part-owner suddenly passed away?
- What would we do if that person announced plans to retire either right away or in a few years?
- How would we finance buying out the shares of a shareholder who wanted to leave voluntarily or whom we wanted to buy out?

Here's how you make the transitions as smooth as possible: Sit down with a business or tax attorney and draft buy-sell agreements. They allow shareholders to buy and sell their shares to each other or to the

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company at preset prices. The agreements eliminate the uncertainty and danger that can financially ruin the company.

The documents lay out the terms and conditions for buying out a shareholder's interest, including unfortunate circumstances such as the death of an owner or part-owner. Negotiating the purchase of a company's shares from that person's spouse or heir can be difficult unless arrangements are made beforehand.

A common financial arrangement is an insurance policy on each shareholder that

names the company as the beneficiary. The company also pays the premiums. When the shareholder dies, the proceeds from the policy are used to redeem the shares from that person's estate.

That seems simple, but a shareholder may have a medical condition that makes him or her expensive to insure. A shareholder may be young, forcing the company to buy a 20-year or 30-year policy, and that's a lot of premiums. In those circumstances, a combination of insurance and cash from future profits may be more cost-effective.

MAKE SURE AGREEMENTS ARE IN ORDER

What if the shareholder simply wants to sell or is forced to sell because of ill health or personal finances? Where will the company find the cash to keep control of the shares in order to avoid having the shareholder sell to an outsider?

The terms spelled out in a buy-sell agreement can give the company the first opportunity to buy the shares. While a shareholder may prefer a lump-sum buyout, a more reasonable plan may be to extend the payout over time.

A last reality: taxes. Each flavor of buy-sell

agreements has its own tax implications. The personal finances of the individual dictate the route that generates the least taxes. Given the sharp decline in housing prices and unprecedented volatility in the stock market, the shareholder's assessment of personal wealth may need to be revised. With that comes an excellent opportunity to revisit the buy-sell agreement.

LAWRENCE M. PLOUCHA is a partner with Atkinson, Diner, Stone, Mankuta & Ploucha, P.A. in Fort Lauderdale who practices business, estate planning and tax law. Reach him at Imp@atkinson-diner.com or (954) 925-5501.